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Supreme Court, U. S.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 470

RACHEL MAYER, ISAAC H. MAYER AND CARL
MEYER, AS TRUSTEES UNDER THE LAST WILL AND TESTA-
MENT OF LEVY MAYER, DECEASED,

Petitioners,

v.

MABEL G. REINECKE, AS COLLECTOR OF INTERNAL REV-
ENUE IN AND FOR THE FIRST INTERNAL REVENUE DISTRICT
OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY TO RESPONDENT'S BRIEF.



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enriched because our life should be enriched

by the love of Jesus.

24. 10.

We have got the news of the death of the

dear mother of the Rev. Mr. W. H. C. of

the First Pres. of the U. S. A. and the

Rev. Mr. W. H. C. of the First Pres. of the

U. S. A. and the Rev. Mr. W. H. C. of the

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REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Rachel Mayer, Isaac H. Mayer and Carl Meyer, as Trustees under the Last Will and Testament of Levy Mayer, deceased, for reply to the brief of respondent in opposition to their petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, respectfully submit to the Court that:

1. Respondent attempts to circumvent the fact that the Circuit Court of Appeals for the Seventh Circuit placed a construction on section 402(a) of the federal Revenue Act of 1921 directly in conflict with the construction placed on said section by this Court in the case of *Crooks v. Harrelson*, 282 U. S. 55, by the statement (respondent's brief, p. 10) that under the law of Illinois the widow's interest in the personal property is "subject to both the expenses of administration and claims against the estate." However, respondent admits in the following words that the Illinois courts have not so decided: "As the court below stated, the question appears never to have been squarely litigated in Illinois." (respondent's brief, p. 8).

The respondent also contends that there is no conflict with *Crooks v. Harrelson* because, "that case involved real property in Missouri." We submit that this distinction is without merit as section 402(a) makes no distinction between real and personal property and applies to both wherever situated.

But more important, respondent ignores the fact that this Court decided in that case that Congress, in enacting said statute, regarded debts and expenses of administration as different and distinct things, and held that property cannot be brought within the terms of the statute by saying that debts include expenses of administration.

2. Respondent ignores the fact that the decision of the Circuit Court of Appeals for the Seventh Circuit in this case is in conflict with the decision of the Sixth Circuit Court of Appeals in the case of *Helburn v. Ballard*, 85 F. (2d) 613, (affirming 9 F. Supp. 812) except by stating (Note 2, p. 7) that in the latter case the Court "took into consideration the facts occurring after the decedent's death." Respondent entirely ignores the fact that under the law of Illinois the election of the widow to take that which the Will of decedent specified she should receive,

was merely an election to exchange her statutory interest for that which the Will provided for her. As stated by the Supreme Court of Illinois in the case of *Requa v. Graham* (1900), 187 Ill. 67, 69-70:

"And in *Blatchford v. Newberry*, 99 Ill. 11, (on p. 62) it is said: 'A provision by will in lieu of dower is, in fact and in legal effect, a mere offer by the testator to purchase out the dower interest for the benefit of his estate.' In *Isenhart v. Brown*, 1 Edw. Ch. 413, which is referred to and endorsed by the court in *Carper v. Crowl, supra*, the court, in speaking of a devise in lieu of dower, said: 'It is the price put by the testator himself upon the right, and which she is at liberty to accept. Her relinquishment of dower forms a valuable consideration for the testamentary gifts. In this point of view she becomes a purchaser of the property left to her by the will.'"

3. We respectfully call the following matters to this Court's attention with respect to respondent's argument:

The statement made on page 8 of respondent's brief as to the dicta in Illinois decisions with respect to the liability of the widow's statutory share in the personality for the payment of costs of administration, is incorrect. Petitioners in their brief (pp. 8-9, 16-18) have not only distinguished these cases but have cited other Illinois cases directly contra.

The statement in footnote 4 on page 8 of respondent's brief with respect to the practice in the probate court of Cook County, Illinois (which is but 1 out of 102 counties in Illinois), is not only inaccurate, but all evidence with respect thereto was stricken from the record. (R. 300.)

The legislative history of the Illinois Dower Act is incorrectly set out on page 9 of respondent's brief, but such history is immaterial, as the Illinois courts have repeatedly held that "expenses of administration" are neither "debts" nor a "claim against the estate". The

law in Illinois is well stated by the Illinois Supreme Court in the case of *Chicago Title and Trust Co. v. Fine Arts Building*, (1919) 288 Ill. 142, 150, wherein the court, while speaking of a liability arising out of the contract of the deceased and a liability arising out of the action of the representative of the estate, said:

"The former is a claim against the estate of the deceased, while the latter is a claim against the representative. * * * Such claims are inconsistent" (Italics ours.)

And in the case of *In re Estate of Thurber* (1924), 311 Ill. 211, 215.

" * * * debts created after the death of the testator cannot be filed as claim against his estate."

4. The respondent contends (br. p. 11) that the petition should be denied because the Revenue Act of 1921 has been amended so that the question as to the propriety of including the widow's statutory interest in the personal property in the taxable estate cannot arise as to persons dying after 1926.

We respectfully submit that this is not a ground for denying the petition. This Court in the case of *Crooks v. Harrelson*, 282 U. S. 55, *supra*, over a similar objection made by the taxpayer, granted certiorari on the petition of the Government under circumstances identical with those present here.

We respectfully submit that the petition should be granted.

ISAAC H. MAYER,
CARL MEYER,
M. B. KENNEDY,
Attorneys for Petitioners.

Chicago, Illinois, November 25, 1942.

